

party requesting the information agrees under oath and in writing:

(1) Not to use or disclose the information except directly in connection with the hearing; and

(2) To return all copies of the information at the conclusion of the proceeding to the person submitting the information under paragraph (a) of this section.

(c) If a person submitting documents in a proceeding under this part does not claim confidentiality under paragraph (a) of this section, the presiding official may assume that there is no objection to disclosure of the document in its entirety.

(d) If the presiding official determines that confidential treatment is not warranted with respect to all or any part of the information in question, the presiding official shall so inform all parties by telephone, if possible, and by facsimile or express mail letter directed to the parties' last known addresses. The person requesting confidential treatment then shall be given an opportunity to withdraw the document before it is considered by the presiding official, or to disclose the information voluntarily to all parties.

(e) If the presiding official determines that confidential treatment is warranted, the presiding official shall so inform all parties by facsimile or express mail directed to the parties' last known address.

(f) When a decision by a presiding official is based in whole or in part on evidence not included in the public record, the decision shall so state, specifying the nature of the evidence and the provision of law under which disclosure was denied, and the evidence so considered shall be retained under seal as part of the official record.

§577.9 Consent order or settlement.

(a) *General.* At any time after the commencement of a proceeding, but at least five (5) days before the date set for hearing under §577.7 of this part, the parties jointly may move to defer the hearing for a reasonable time to permit negotiation of a settlement or an agreement containing findings and an order disposing of the whole or any part of the proceeding.

(b) *Content.* Any agreement containing consent findings and an order disposing of the whole or any part of a proceeding shall also provide:

(1) A waiver of any further procedural steps before the Commission;

(2) A waiver of any right to challenge or contest the validity of the order and decision entered into in accordance with the agreement; and

(3) That the presiding official's certification of the findings and agreement shall constitute dismissal of the appeal and final agency action.

(c) *Submission.* Before the expiration of the time granted for negotiations, the parties or their authorized representatives may:

(1) Submit to the presiding official a proposed agreement containing consent findings and an order;

(2) Notify the presiding official that the parties have reached a full settlement and have agreed to dismissal of the action, subject to compliance with the terms of the settlement; or

(3) Inform the presiding official that agreement cannot be reached.

(d) *Disposition.* In the event a settlement agreement containing consent findings and an order is submitted within the time granted, the presiding official shall certify such findings and agreement within thirty (30) days after his or her receipt of the submission. Such certification shall constitute dismissal of the appeal and final agency action.

§577.12 Intervention.

(a) Persons other than the respondent may be permitted to participate as parties if the presiding official finds that:

(1) The final decision could directly and adversely affect them or the class they represent;

(2) They may contribute materially to the disposition of the proceedings;

(3) Their interest is not adequately represented by existing parties; and

(4) Intervention would not unfairly prejudice existing parties or delay resolution of the proceeding.

(b) If a tribe has jurisdiction over lands on which there is a gaming operation that is the subject of a proceeding under this part, and the tribe is not already a named party, such